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COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE 363rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 November 1998, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the second periodic report of Tunisia (continued)

1. The delegation of Tunisia resumed places at the Committee table.

2. The CHAIRMAN read out on behalf of the Country Rapporteur the original English text of the Committee's draft conclusions and recommendations concerning the second periodic report of Tunisia:

"1. The Committee considered the second periodic report of Tunisia (CAT/C/20/Add.7) at its 358th, 359th and 363rd meetings, held on 18 and 20 November 1998 (CAT/C/SR.358, 359 and 363) and has adopted the following conclusions and recommendations:

A. Introduction

2. Tunisia ratified the Convention on 23 September 1988 and made the declarations provided for in articles 21 and 22.

3. Its second periodic report was due on 22 October 1993. The Committee regrets that the report was received on 10 November 1997 only.

B. Positive aspects

4. During the period covered by the report measures were taken by the authorities to build a legal and constitutional framework for the promotion and protection of human rights. The Committee welcomes the establishment of a number of human rights posts, offices and units within the executive branch and within the civil society. The Committee also welcomes the efforts that were made to raise the level of awareness of the principles of human rights in the society. The Committee noted, in particular, the publishing of a code of conduct for law-enforcement officials, the setting up of human rights departments in Tunisian universities and the establishment of human rights units in some key Ministries.

5. The Committee also notes that, for the first time, an independent commission of investigation was established to examine the allegation of abuses that took place in 1991.

6. The Tunisian Constitution provides that duly ratified treaties have a higher authority than laws. Thus, the provisions of the Convention take precedence over domestic legislation.

C. Factors and difficulties impeding the application of the provisions of the Convention

7. The Committee is aware of the challenges that were facing the Government during the period covered by the report. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

D. Subjects of concern

8. The Committee reiterates its views that the definition of torture under Tunisian law is not in conformity with article 1 of the Convention, as the Tunisian Criminal Code inter alia uses the term 'violence' instead of 'torture' and article 101 of the Criminal Code penalizes the use of violence only when it is used without just cause.

9. The Committee is concerned over the wide gap that exists between law and practice with regard to the protection of human rights. The Committee is particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police that in certain cases resulted in death in custody. Furthermore, it is concerned over the pressure and intimidation used by officials, to prevent the victims from lodging complaints.

10. The Committee is concerned that many of the regulations existing in Tunisia for arrested persons are not adhered to in practice, in particular:

- the limitation of pre-trial detention to the 10-day maximum prescribed by law,
- the immediate notification of family members,
- the requirement of medical examination with regard to allegations of torture,
- the carrying out of autopsies in all cases of death in custody.

11. The Committee notes that arrests are very often made by plainclothes agents who refuse to show any identification or warrant.

12. The Committee is particularly disturbed by the abuses directed against women members of the families of detainees and exiled persons. It has been reported that dozens of women were subjected to violence and sexual abuse or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.

13. The Committee feels that by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encouraging the continuation of these abhorrent practices.

14. The Committee notes further that the State party does not accede to requests for extradition of political refugees. The Committee expresses its concern that this should not be the only exception for refusal of extradition. In this regard, the Committee draws the attention of the State party to article 3 of the Convention that prohibits the extradition of a person if 'there are substantial grounds for believing that he would be in danger of being subjected to torture'.

E. Recommendations

15. The Committee calls upon the State party to put an end to the degrading practice of torture and to eliminate the gap between the law and its implementation and in particular to take up the following measures:

(a) To ensure strict enforcement of the provisions of law and procedures of arrest and police custody.

(b) To strictly enforce the procedures of registration, including notification of families of persons taken into custody.

(c) To ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or persecution, even if the outcome of the investigation into their claims does not prove their allegations, and to seek and obtain redress if these allegations are proven correct.

(d) To ensure that medical examinations are automatically provided following allegations of abuse and an autopsy is performed following any death in custody; that the findings of all investigations concerning cases of torture are made public, and that this information should include details of any offenses committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those who were found guilty.

16. The Committee urges the State party to take the following measures:

(a) To reduce the police custody period to a maximum of 48 hours.

(b) To bring the relevant articles of the Criminal Code into line with the definition of torture contained in article 1 of the Convention.

(c) To amend the relevant legislation to ensure that no evidence obtained through torture shall be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statement was made.

17. The Committee urges the State party to submit its third periodic report by 30 November 1999".

3. Mr. MORJANE (Tunisia) expressed great surprise at the Committee's conclusions. They did not reflect the discussion between the Committee and his country's delegation and emphasized the negative aspects of the human rights situation in Tunisia, saying nothing about any of the positive ones. The Committee's recommendations would be transmitted to his country's authorities, which, in a spirit of cooperation with the Committee, would examine them all in detail. He hoped that the Committee would bear in mind that it was difficult for delegations which appeared before it to deal with allegations of human rights violations of which they had previously been unaware.

4. The delegation of Tunisia withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.20 p.m.

CLOSURE OF THE SESSION

5. The CHAIRMAN expressed to Mr. Zupančič the Committee's great appreciation of the work he had done as a member and of his willingness to take on new tasks and efficiency in discharging them. He wished him every success in his new functions at the European Court of Human Rights.

6. Mr. MAVROMMATIS thanked the Chairman for his conduct of the Committee's business.

7. After the customary exchange of courtesies, the CHAIRMAN declared the session closed.

The meeting rose at 3.25 p.m.